

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: April 20, 21, 2005

Division: Public Works

Bulk Item: Yes X No

Department: Facilities Maintenance

Staff Contact Person: Ann Riger

AGENDA ITEM WORDING: Approval of a Consent to Assignment of Lease with Conch Cruisers, Inc., Assignor, and Francis J. Gonzon, Assignee, to lease approximately 3,928 square feet of restaurant space at Higgs Beach in Key West.

ITEM BACKGROUND: In accordance to paragraph 7 of the original Lease Agreement dated August 12, 1998, Lessee may elect to sub-lease or assign the lease agreement only upon previous written consent of the Board of County Commissioners.

PREVIOUS RELEVANT BOCC ACTION: On August 12, 1998, the BOCC approved to enter into a negotiated lease agreement with Conch Cruisers, Inc. for the restaurant/concession at Clarence E. Higgs Memorial Beach. Thereafter, the BOCC approved a renewal on July 17, 2002, for one five-year term commencing August 12, 2003, with an additional five-year extension commencing August 12, 2008, at the Lessee's option. The original agreement has been modified to reflect changes in rent obligations on May 16, 2001, July 15, 2003, May 19, 2004, and July 14, 2004.

CONTRACT/AGREEMENT CHANGES: Consent to assignment to Francis J. Gonzon.

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: N/A

BUDGETED: Yes No

COST TO COUNTY: N/A

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes X No

AMOUNT PER MONTH \$6,514.17 **Year** \$78,170.04

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:

Beth Leto for
Dent Pierce

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

THE SMITH LAW FIRM

A PROFESSIONAL ASSOCIATION

333 FLEMING STREET • KEY WEST, FLORIDA 33040

WAYNE LARUE SMITH, MBA, JD
ALSO ADMITTED WASHINGTON, DC

April 5, 2005

SETH D. CORNEAL

VIA HAND DELIVERY

Ann Riger
Monroe County Public Works
3583 S. Roosevelt Boulevard
Key West, Florida 33040

RE: Salute Restaurant at Higgs Beach

Dear Ms. Riger:

Thank you for taking the time to speak with me regarding the proposed assignment of lease for the Salute restaurant facility. As you requested, I enclose a copy of the Purchase and Sale Agreement. We will deliver next week documentation of the creditworthiness and business characteristic of the proposed assignee, Francis J. Gonzon or a newly formed limited liability company to be solely owned by Francis J. Gonzon.

Please place the request for approval of assignment of lease on the April agenda for the Monroe County Board of County Commissioners.

Thank you for your assistance.

Sincerely,


Wayne LaRue Smith

WLS/lpd
Enclosure

Z:\DOCS\1400\02\04-05-05 riger letter.doc

Commercial Contract
FLORIDA ASSOCIATION OF REALTORS®

- 1* 1. PURCHASE AND SALE: FRANCIS J. GONZON, A NEWLY FORMED FLORIDA LLC, AND/OR ASSIGNS ("Buyer")
- 2* agrees to buy and DAWN M. VINCENT, DBA CONCH CRUISERS, INC. ("Seller")
- 3* agrees to sell the property described as: Street Address: 1000 ATLANTIC BLVD, KEY WEST, FL 33040
- 4*
- 5* Legal Description: BUSINESS OPPORTUNITY ONLY/SALUTE RESTAURANT
- 6*
- 7* and the following Personal Property: EQUIPMENT, FURNITURE, FIXTURES, AND INVENTORY AS SHOWN IN ITS
- 8* ENTIRETY, SUBJECT TO COMPLETE INVENTORY LIST
- 9 (all collectively referred to as the "Property") on the terms and conditions set forth below. The "Effective Date" of this Contract is
- 10 the date on which the last of the Parties signs the latest offer. Time is of the essence in this Contract. Time periods of 5
- 11 days or less will be computed without including Saturday, Sunday, or national legal holidays and any time period ending on a
- 12 Saturday, Sunday or national legal holiday will be extended until 5:00 p.m. of the next business day.
- 13* 2. PURCHASE PRICE:
- 14* (a) Deposit held in escrow by STONES & CARDENAS ESCROW ACCOUNT \$ 495,000.00
- 15* (b) Additional deposit to be made within 30 days from Effective Date \$ 25,000.00
- 16* (c) Total mortgages (as referenced in Paragraph 3) \$ 25,000.00
- 17* (d) Other: N/A \$ 0
- 18* (e) Balance to close, subject to adjustments and prorations, to be made with cash, locally drawn \$ 445,000.00
- 19 certified or cashier's check or wire transfer.
- 20* 3. THIRD PARTY FINANCING: Within N/A days from Effective Date ("Application Period"), Buyer will, at Buyer's expense, apply for
- 21* third party financing in the amount of \$ N/A or _____ % of the purchase price to be amortized over a period of N/A
- 22* years and due in no less than N/A years and with a fixed interest rate not to exceed ☐ _____ % per year or variable interest rate not
- 23* to exceed ☐ N/A % at origination with a lifetime cap not to exceed _____ % from initial rate, with additional terms as follows:
- 24*
- 25 Buyer will pay for the mortgagee title insurance policy and for all loan expenses. Buyer will timely provide any and all credit,
- 26 employment, financial and other information reasonably required by any lender. Buyer will notify Seller immediately upon obtaining
- 27 financing or being rejected by a lender. If Buyer, after diligent effort, fails to obtain a written commitment within N/A days from
- 28 Effective Date ("Financing Period"), Buyer may cancel the Contract by giving prompt notice to Seller and Buyer's deposit(s) will be
- 29 returned to Buyer in accordance with Paragraph 9.
- 30* Buyer (Signature) and Seller (Signature) acknowledge receipt of a copy of this page, which is page 1 of 5 Pages.

32* ☒ other ASSIGNABLE LEASE _____, free of liens, easements and encumbrances of record or known to Seller
33* but subject to property taxes for the year of closing; covenants, restrictions and public utility easements of record; and (list any
34* other matters to which title will be subject) N/A
35*
36* provided there exists at closing no violation of the foregoing and none of them prevents Buyer's intended use of the Property as
37* ITS PRESENT AND LEGAL USE

38* (a) Evidence of Title: Seller will, at (check one) ☐ Seller's ☐ Buyer's expense and within _____ days ☐ from Effective Date
39* ☐ prior to Closing Date ☐ from date Buyer meets or waives financing contingency in Paragraph 3, deliver to Buyer (check one)
40* ☐ a title insurance commitment by a Florida licensed title insurer and, upon Buyer recording the deed, an owner's policy in
41* the amount of the purchase price for fee simple title subject only to exceptions stated above.
42* ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm.
43* However, if such an abstract is not available to Seller, then a prior owner's title policy acceptable to the proposed insurer as
44* a base for reissuance of coverage. The prior policy will include copies of all policy exceptions and an update in a format
45* acceptable to Buyer from the policy effective date and certified to Buyer or Buyer's closing agent together with copies of all
46* documents recited in the prior policy and in the update.

47* (b) Title Examination: Buyer will, within 15 days from receipt of the evidence of title deliver written notice to Seller of title
48* defects. Title will be deemed acceptable to Buyer if (1) Buyer fails to deliver proper notice of defects or (2) Buyer delivers proper
49* written notice and Seller cures the defects within _____ days from receipt of the notice ("Curative Period"). If the defects are
50* cured within the Curative Period, closing will occur within 10 days from receipt by Buyer of notice of such curing. Seller may
51* elect not to cure defects if Seller reasonably believes any defect cannot be cured within the Curative Period. If the defects are
52* not cured within the Curative Period, Buyer will have 10 days from receipt of notice of Seller's inability to cure the defects to
53* elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in
54* purchase price. The party who pays for the evidence of title will also pay related title service fees including title and abstract
55* charges and title examination.

56* (c) Survey: (check applicable provisions below)
57* ☐ Seller will, within _____ days from Effective Date, deliver to Buyer copies of prior surveys, plans, specifications, and
58* engineering documents, if any, and the following documents relevant to this transaction:
59* _____
60* possession, which show all currently existing structures.
61* ☐ Buyer will, at ☐ Seller's ☐ Buyer's expense and within the time period allowed to deliver and examine title evidence,
62* obtain a current certified survey of the Property from a registered surveyor. If the survey reveals encroachments on the
63* Property or that the improvements encroach on the lands of another, ☐ Buyer will accept the Property with existing
64* encroachments ☐ such encroachments will constitute a title defect to be cured within the Curative Period.

65* (d) Ingress and Egress: Seller warrants that the Property presently has ingress and egress.

66* (e) Possession: Seller will deliver possession and keys for all locks and alarms to Buyer at closing.

67* 5. CLOSING DATE AND PROCEDURE: This transaction will be closed in _____ MONROE County, Florida on
68* or before the JUNE 01, 2005 or within N/A days from Effective Date ("Closing Date"), unless otherwise extended
69* herein. ☒ Seller ☐ Buyer will designate the closing agent. Buyer and Seller will, within _____ days from Effective Date, deliver to
70* Escrow Agent signed instructions which provide for closing procedure. If an institutional lender is providing purchase funds, lender
71* requirements as to place, time of day, and closing procedures will control over any contrary provisions in this Contract.

72* (a) Costs: Buyer will pay taxes and recording fees on notes, mortgages and financing statements and recording fees for the deed.
73* Seller will pay taxes on the deed and recording fees for documents needed to cure title defects. If Seller is obligated to discharge
74* any encumbrance at or prior to closing and fails to do so, Buyer may use purchase proceeds to satisfy the encumbrances.

75* (b) Documents: Seller will provide the deed, bill of sale, mechanic's lien affidavit, assignments of leases, updated rent roll,
76* tenant and lender estoppel letters, assignments of permits and licenses, corrective instruments and letters notifying tenants of
77* the change in ownership/rental agent. If any tenant refuses to execute an estoppel letter, Seller will certify that information
78* regarding the tenant's lease is correct. If Seller is a corporation, Seller will deliver a resolution of its Board of Directors
79* authorizing the sale and delivery of the deed and certification by the corporate Secretary certifying the resolution and setting forth
80* facts showing the conveyance conforms with the requirements of local law. Seller will transfer security deposits to Buyer. Buyer
81* will provide the closing statement, mortgages and notes, security agreements and financing statements.

82* Buyer [Signature] and Seller [Signature] acknowledge receipt of a copy of this page, which is page 2 of 5 Pages.

84* ☐ as of _____: real estate taxes, bond and assessment payments assumed by Buyer, interest,
85* rents, association dues, insurance premiums acceptable to Buyer, operational expenses and _____
86 If the amount of taxes and assessments for the current year cannot be ascertained, rates for the previous year will be used with due
87 allowance being made for improvements and exemptions. Seller is aware of the following assessments affecting or potentially
88* affecting the Property: N/A
89 Buyer will be responsible for all assessments of any kind which become due and owing on or after Effective Date, unless the
90 improvement is substantially completed as of Closing Date, in which case Seller will be obligated to pay the entire assessment.
91 (d) FIRPTA Tax Withholding: The Foreign Investment in Real Property Act ("FIRPTA") requires Buyer to withhold at closing a
92 portion of the purchase proceeds for remission to the Internal Revenue Service ("I.R.S.") if Seller is a "foreign person" as defined
93 by the Internal Revenue Code. The parties agree to comply with the provisions of FIRPTA and to provide, at or prior to closing,
94 appropriate documentation to establish any applicable exemption from the withholding requirement. If withholding is required
95 and Buyer does not have cash sufficient at closing to meet the withholding requirement, Seller will provide the necessary funds
96 and Buyer will provide proof to Seller that such funds were properly remitted to the I.R.S.

97* 6. ESCROW: Buyer and Seller authorize _____

98* Telephone: 305.294.0252

Facsimile: 305.294.5788

STONES & CARDENAS

99* FL 33040

Address: 221 SIMONTON ST. KEY WEST.

100* to receive funds and other items and, subject to clearance, disburse them in accordance with the terms of this Contract. Escrow
101* Agent will deposit all funds received in ☒ a non-interest bearing escrow account ☐ an interest bearing escrow account with
102* interest accruing to _____ N/A
103* ☐ at _____ intervals. If Escrow Agent receives conflicting demands or has a good faith doubt as to Escrow
104 Agent's duties or liabilities under this Contract, he/she may (a) hold the subject matter of the escrow until the parties mutually
105 agree to its disbursement or until issuance of a court order or decision of arbitrator determining the parties' rights regarding the
106 escrow or (b) deposit the subject matter of the escrow with the clerk of the circuit court having jurisdiction over the dispute. Upon
107 notifying the parties of such action, Escrow Agent will be released from all liability except for the duty to account for items
108 previously delivered out of escrow. If a licensed real estate broker, Escrow Agent will comply with applicable provisions of Chapter
109 475, Florida Statutes. In any suit or arbitration in which Escrow Agent is made a party because of acting as agent hereunder or
110 interpleads the subject matter of the escrow, Escrow Agent will recover reasonable attorneys' fees and costs at all levels, with
111 such fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court or other costs in favor
112 of the prevailing party. The parties agree that Escrow Agent will not be liable to any person for misdelivery to Buyer or Seller of
113 escrowed items, unless the misdelivery is due to Escrow Agent's willful breach of this Contract or gross negligence.

114 7. PROPERTY CONDITION: Seller will deliver the Property to Buyer at the time agreed in its present "as is" condition, ordinary
115 wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition. Seller makes no warranties
116 other than marketability of title. By accepting the Property "as is," Buyer waives all claims against Seller for any defects in the
117 property. (Check (a) or (b))
118* ☐ (a) As Is: Buyer has inspected the Property or waives any right to inspect and accepts the Property in its "as is" condition.
119* ☒ (b) Due Diligence Period: Buyer will, at Buyer's expense and within 30 days from Effective Date ("Due Diligence Period"),
120 determine whether the Property is suitable, in Buyer's sole and absolute discretion, for Buyer's intended use and development of
121 the Property as specified in Paragraph 4. During the Due Diligence Period, Buyer may conduct any tests, analyses, surveys and
122 investigations ("Inspections") which Buyer deems necessary to determine to Buyer's satisfaction the Property's engineering,
123 architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision
124 regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional
125 growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with
126 American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that Buyer deems
127 appropriate to determine the suitability of the Property for Buyer's intended use and development. Buyer shall deliver written notice
128 to Seller prior to the expiration of the Due Diligence Period of Buyer's determination of whether or not the Property is acceptable.
129 Buyer's failure to comply with this notice requirement shall constitute acceptance of the Property in its present "as is" condition.
130 Seller grants to Buyer, its agents, contractors and assigns, the right to enter the Property at any time during the Due Diligence
131 Period for the purpose of conducting inspections; provided, however, that Buyer, its agents, contractors and assigns enter the
132 Property and conduct inspections at their own risk. Buyer shall indemnify and hold Seller harmless from losses, damages, costs,
133 claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any person, arising from the conduct of
134 any and all inspections or any work authorized by Buyer. Buyer will not engage in any activity that could result in a mechanic's lien
135 being filed against the Property without Seller's prior written consent. In the event this transaction does not close, (1) Buyer shall
136 repair all damages to the Property resulting from the inspections and return the Property to the condition it was in prior to conduct of
137 the inspections, and (2) Buyer shall, at Buyer's expense, release to Seller all reports and other work generated as a result of the
138 inspections. Should Buyer deliver timely notice that the Property is not acceptable, Seller agrees that Buyer's deposit shall be
139 immediately returned to Buyer and the Contract terminated.

140* Buyer [Signature] and Seller [Signature] acknowledge receipt of a copy of this page, which is page 3 of 5 Pages.

142 conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and to ensure that all
143 Property is on the premises.

144 (d) Disclosures:

145 1. Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient
146 quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state
147 guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained
148 from your county public health unit.

149 2. Energy Efficiency: Buyer may have determined the energy efficiency rating of the building, if any is located on the Real
150 Property.

151 8. OPERATION OF PROPERTY DURING CONTRACT PERIOD: Seller will continue to operate the Property and any business
152 conducted on the Property in the manner operated prior to Contract and will take no action that would adversely impact the
153 Property, tenants, lenders or business, if any. Any changes, such as renting vacant space, that materially affect the Property or
154 Buyer's intended use of the Property will be permitted ☒ only with Buyer's consent ☐ without Buyer's consent.

155 9. RETURN OF DEPOSIT: Unless otherwise specified in the Contract, in the event any condition of this Contract is not met and
156 Buyer has timely given any required notice regarding the condition having not been met, Buyer's deposit will be returned in
157 accordance with applicable Florida laws and regulations.

158 10. DEFAULT:

159 (a) In the event the sale is not closed due to any default or failure on the part of Seller other than failure to make the title
160 marketable after diligent effort, Buyer may either (1) receive a refund of Buyer's deposit(s) or (2) seek specific performance. If
161 Buyer elects a deposit refund, Seller will be liable to Broker for the full amount of the brokerage fee.

162 (b) In the event the sale is not closed due to any default or failure on the part of Buyer, Seller may either (1) retain all deposit(s)
163 paid or agreed to be paid by Buyer as agreed upon liquidated damages, consideration for the execution of this Contract, and in
164 full settlement of any claims, upon which this Contract will terminate or (2) seek specific performance. If Seller retains the
165 deposit, Seller will pay the Listing and Cooperating Brokers named in Paragraph 12 fifty percent of all forfeited deposits retained
166 by Seller (to be split equally among the Brokers) up to the full amount of the brokerage fee.

167 11. ATTORNEY'S FEES AND COSTS: In any claim or controversy arising out of or relating to this Contract, the prevailing party,
168 which for purposes of this provision will include Buyer, Seller and Broker, will be awarded reasonable attorneys' fees, costs and
169 expenses.

170 12. BROKERS: Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed
171 real estate Broker other than:

172* (a) Listing Broker: STEVEN D. SCHWARTZ, BROKER SEAPORT LLC/REALTORS
173* who is ☐ an agent of _____ ☒ a transaction broker ☐ a nonrepresentative
174* and who will be compensated by ☒ Seller ☐ Buyer ☐ both parties pursuant to ☐ a listing agreement ☐ other (specify)
175* 10% OF TRANSACTION PRICE OR \$49,500.00
176* _____
177* _____

178* (b) Cooperating Broker: N/A
179* who is ☐ an agent of N/A ☐ a transaction broker ☐ a nonrepresentative
180* and who will be compensated by ☐ Buyer ☐ Seller ☐ both parties pursuant to ☐ an MLS or other offer of compensation to a
181* cooperating broker ☐ other (specify) _____
182* _____
183* _____
184* _____

185 (collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to inquiries,
186 introductions, consultations and negotiations resulting in this transaction. Seller and Buyer agree to indemnify and hold Broker
187 harmless from and against losses, damages, costs and expenses of any kind, including reasonable attorneys' fees at all levels, and
188 from liability to any person, arising from (1) compensation claimed which is inconsistent with the representation in this Paragraph, (2)
189 enforcement action to collect a brokerage fee pursuant to Paragraph 10, (3) any duty accepted by Broker at the request of Buyer or
190 Seller, which duty is beyond the scope of services regulated by Chapter 475, F.S., as amended, or (4) recommendations of or services
191 provided and expenses incurred by any third party whom Broker refers, recommends or retains for or on behalf of Buyer or Seller.

192* 13. ASSIGNABILITY; PERSONS BOUND: This Contract may be assigned to a related entity, and otherwise ☐ is not assignable
193* ☒ is assignable. The terms "Buyer," "Seller" and "Broker" may be singular or plural. This Contract is binding upon Buyer, Seller
194 and their heirs, personal representatives, successors and assigns (if assignment is permitted).

195* Buyer [Signature] and Seller [Signature] acknowledge receipt of a copy of this page, which is page 4 of 5 Pages.

- 197* ☐ Arbitration
 198* ☐ Section 1031 Exchange
 199* ☐ Property Inspection and Repair
 200* ☐ Seller Representations

- ☐ Seller Warranty
☐ Coastal Construction Control Line
☐ Flood Area Hazard Zone
☐ Seller Financing

- ☐ Existing Mortgage
☐ Other _____
☐ Other _____
☐ Other _____

201 15. MISCELLANEOUS: The terms of this Contract constitute the entire agreement between Buyer and Seller. Modifications of
 202 this Contract will not be binding unless in writing, signed and delivered by the party to be bound. Signatures, initials, documents
 203 referenced in this Contract, counterparts and written modifications communicated electronically or on paper will be acceptable for
 204 all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this Contract prevail
 205 over preprinted terms. If any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue
 206 to be fully effective. This Contract will be construed under Florida law and will not be recorded in any public records. Delivery of any
 207 written notice to any party's agent will be deemed delivery to that party.

208 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY
 209 PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL FACTS AND REPRESENTATIONS THAT ARE
 210 IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE
 211 INTERPRETING CONTRACTS, DETERMINING THE EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF
 212 TITLE, FOREIGN INVESTOR REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND
 213 OTHER SPECIALIZED ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL
 214 REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER REPRESENTATIONS OR PUBLIC
 215 RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF THE REPRESENTATION. BUYER AGREES TO RELY
 216 SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY
 217 CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.

218* DEPOSIT RECEIPT: Deposit of \$ _____ by ☐ _____ check ☐ other _____ received on
 219* _____, _____ by _____
 220 _____

Signature of Escrow Agent

221 OFFER: Buyer offers to purchase the Property on the above terms and conditions. Unless acceptance is signed by Seller and a
 222 signed copy delivered to Buyer or Buyer's agent no later than _____ a.m. ☐ p.m. on _____,
 223 Buyer may revoke this offer and receive a refund of all deposits.

224* Date: 2/25/05 BUYER: _____ Tax ID No: _____
 225* Title: FRANCIS J. GONZON
 226* Address: 35704 SPINNAKER CR. WOLFE RUNNE LEWES, DE 19658 Telephone: 302.542.7885 Facsimile: 302.645.1607
 227* Date: _____ BUYER: _____ Tax ID No: _____

228* Title: _____ Telephone: _____ Facsimile: _____
 229* Address: _____

230* ACCEPTANCE: Seller accepts Buyer's offer and agrees to sell the Property on the above terms and conditions (☐ subject to the
 231 attached counter offer).

232* Date: 03/08/05 SELLER: _____ Tax ID No: _____
 233* Title: OWNER DAWN M. VINCENT
 234* Address: 1601 BAHAMA DRIVE KEY WEST, FL 33040 Telephone: 305.249.1176 Facsimile: _____

235* Date: _____ SELLER: _____ Tax ID No: _____
 236* Title: _____ Telephone: _____ Facsimile: _____
 237* Address: _____

238* Buyer (_____) and Seller (_____) acknowledge receipt of a copy of this page, which is page 5 of 5 Pages.

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Brokerage Relationship Disclosure FLORIDA ASSOCIATION OF REALTORS®



IMPORTANT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You should not assume that any real estate broker or sales associate represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation.

TRANSACTION BROKER NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

As a transaction broker, STEVEN D. SCHWARTZ SEAPORT LLC/REALTORS and its associates, provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

Date 2/25/05

Signature FRANCIS J. GONZON

Signature _____

Copy returned to Customer on the _____ day of _____ by: ☒ personal delivery ☐ mail ☐ facsimile

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1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

Date

2/25/05

Dawn M Vincent
Signature

DAWN M. VINCENT

Signature

Copy returned to Customer on the _____ day of _____ by: ☐ personal delivery ☐ mail ☐ facsimile.

This form is available for use by the entire real estate industry and is not intended to identify the user as a REALTOR. REALTOR is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS and who subscribe to its Code of Ethics. The copyright laws of the United States (17 U.S. Code) forbid the unauthorized reproduction of blank forms by any means including facsimile or computerized forms.

Commission Agreement

FLORIDA ASSOCIATION OF REALTORS®

Date 2/25/05

agrees that DAWN M. VINCENT, DBA CONCH BRUISERS, INC. ("Seller/Lessor")
and will use diligent effort to: STEVEN D. SCHWARTZ, BROKER, SEAPORT, LLC ("Broker") may show

(Check One):

☒ sell☐ leaseSeller's/Lessor's Property located at SALUTE' RESTAURANT (BUSINESS OPPORTUNITY ONLY)1000 ATLANTIC BLVD. KEY WEST, FL 33040to FRANCIS J. GONZON, A NEWLY FORMED FLORIDA LLC AND/OR ASSIGNS (Property),
(Prospect).

In the event the Property is:

(Check One):

☒ sold, optioned, contracted to be sold☐ leasedto Prospect procured by Broker, within 100 days of the date referenced above, Seller/Lessor agrees to pay Broker:

(Complete One):

☐ \$ _____☒ 10.0 % of the gross purchase price of the Property.☐ _____ % of the gross lease value of a lease executed regarding the Property.☐ other _____

The fee shall be paid to Broker by Seller/Lessor in the event of sale, at time of closing the sale; or in the event of lease at time of lease execution. Broker's fee is due if Seller defaults on a executed sales contract with Prospect or if Seller agrees with Prospect to cancel an executed sales contract

Other Provisions: N/A

 Seller/Lessor

DAWN M. VINCENT DBA CONCH CRUISERS, INC.

Date

Seller/Lessor

Date

2/25/05

Broker

Brokerage Office

Accepted By

Title

Date



Addendum #1

Concerning the property known as

SALUTE RESTAURANT 1000 ATLANTIC BLVD. KEY WEST, FL 33040

THIS CONTRACT SUBJECT TO THE ASSIGNABILITY OF MONROE COUNTY LEASE PRESENTLY IN EFFECT TO FRANCIS J. GONZON AND/OR ASSIGNS.

BUYER HAS 30 DAYS FROM THE EFFECTIVE DATE TO PERFORM ANY AND ALL DUE DILIGENCE HE MAY DEEM NECESSARY AND MAY TERMINATE THIS CONTRACT BASED ON RESULTS OF SAID DUE DILIGENCE AND/OR INSPECTION.

THIS CONTRACT IS SUBJECT TO APPROVAL OF THE STATE OF FLORIDA TRANSFERRING THE PRESENT SRX LIQUOR LICENSE IN PLACE TO FRANCIS J. GONZON AND/OR ASSIGNS.

SELLER (DAWN M VINCENT) IS A LICENSED FLORIDA REAL ESTATE AGENT.

SELLER OFFERS NO WARRANTY ON BUILDING FIXTURES AND/OR EQUIPMENT EITHER EXPRESSED OR IMPLIED.

ORIGINAL ARTWORK BY CHRISTINE BLACK THAT IS PRESENTLY ON CONSIGNMENT IS NOT INCLUDED IN THIS TRANSACTION.

Signature

FRANCIS J. GONZON

2/25/05

Date

Signature

DAWN M. VINCENT

Date

2/25/05

Date

Signature

Date

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Francis J. Gonzon Contract #_____

Effective Date: _____

Expiration Date: _____

Contract Purpose/Description:

Consent of assignment of lease with Conch Cruisers, Inc. and Francis J. Gonzon to
lease 3,928 square feet of restaurant space at Higgs Beach

Contract Manager:	<u>Ann Riger</u>	<u>4549</u>	<u>Facilities Maint/Stop #4</u>
	(Name)	(Ext.)	(Department/Stop #)

for BOCC meeting on 04/20/05 Agenda Deadline: 04/05/05

CONTRACT COSTS

Total Dollar Value of Contract: \$ / Revenue / Current Year Portion: \$

Budgeted? Yes ☐ No ☐ Account Codes: _____ - _____ - _____ - _____ - _____

Grant: \$

County Match: \$ _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$_____/yr For: _____

(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

Division Director 4/5/05 Date In 4/5/05 Changes Needed Yes ☐ No ☒ Reviewer Beth Leto Date Out 4/5/05

Risk Management 4-505 Yes ☐ No ☒ M. Slawick 4-5-05

O.M.B./Purchasing 4/5/05 Yes ☐ No ☒ *Sheldene Spence* 4/5/05

County Attorney 4/5/05 Yes ☐ No ☒ S. Smith 4/5/05

Comments:

CONSENT TO ASSIGNMENT OF LEASE

This Consent to Assignment is entered into this 20th day of April, 2005, by and between Monroe County, a political subdivision of the State of Florida, hereafter County, Conch Cruisers, Inc., hereafter Assignor, and Francis J. Gonzon, hereafter Assignee, the parties agreeing as follows:

1. The County leases approximately 3,928 s.f. of restaurant space at Higgs Beach, Key West, Florida, through an Agreement dated August 12, 1998, hereafter the original agreement, and renewed on July 17, 2002 for one five-year term commencing August 12, 2003, with an additional five-year extension commencing August 12, 2008, at the Lessee's option. The original agreement has been modified to reflect changes in rent and other obligations on May 16, 2001, July 15, 2003, May 19, 2004, and July 14, 2004. The original agreement, modifications and renewal agreements are attached and incorporated into this Consent to Assignment.
2. Paragraph 7 of the lease provides that the Lessee may elect to sub-lease or assign the lease agreement only upon the previous written consent of the Board of County Commissioners for Monroe County.
3. The Assignor and Assignee have entered into a contract for sale/purchase of the restaurant business which contract includes an assignment to Assignee of all the Assignor's rights, title and interest in the lease.
4. In consideration for such consent, the Assignee agrees to be bound by all the terms and conditions of the original agreement, as previously amended.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date first written above.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY: _____
Deputy Clerk

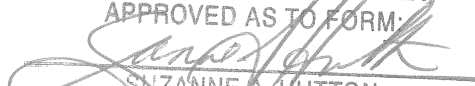
BY: _____
Mayor Dixie M. Spehar

LESSEE CONCH CRUISERS, INC.

LESSEE FRANCIS J. GONZON

BY: _____
Dawn Parinello

BY: _____
Francis J. Gonzon

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 4/05/05

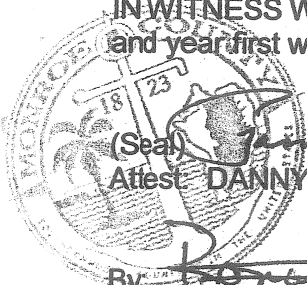
CONTRACT AMENDMENT
Salute Restaurant at Higgs Beach

This Contract Amendment is made and entered into this July 14, 2004, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to amend the agreement between the parties dated August 12, 1998, as amended May 16, 2001, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, and Contract Amendment dated May 19, 2004, copies incorporated hereto for reference, as follows:

1. To correct action of May 19, 2004, to include 1.9% CPI rent increase to the monthly sum of \$1,162.00 per month to cover the cost of the County providing janitorial services and opening and closing the public restrooms at Higgs Beach.
2. Monthly rent, therefore, shall be payable to Monroe County in the amount of \$6,514.17, which shall include both the \$5,330.09 rental fee and the \$1,184.08 maintenance fee.

In all other respects, the original agreement between the parties dated August 12, 1998, as amended May 16, 2001, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, and Contract Amendment dated May 19, 2004, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.



(Seal) *Danny L. Kolhage* D.C.
Attest DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *Ronald R. Lee*
Deputy Clerk

By: *Murray E. Nelson*

Adam L. Vega
Witness

CONCH CRUISERS, INC.

Ronald R. Lee
Witness

By: *Dustin M. Vincent*

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
Suzanne A. Hutton
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 6/25/04

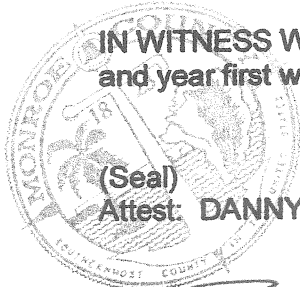
CONTRACT AMENDMENT
Salute Restaurant at Higgs Beach

This Contract Amendment is made and entered into this May 19, 2004, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to amend the agreement between the parties dated August 12, 1998, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, copies incorporated hereto for reference, as follows:

1. In accordance with Article 2. of the July 15, 2003 Renewal Agreement: "The Lease amount shall increase by the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the Annual Average CPI computation from January 1 through December 31 of the previous year. The CPI increase shall be calculated for each additional year for the five-year period.
2. Rent, therefore, payable to Monroe County, shall increase by 1.9% from \$5230. 71 per month to \$5330.09 per month (\$99.38 per month additional).

In all other respects, the original agreement between the parties dated August 12, 1998, as amended on July 17, 2002 and Renewal Agreement dated July 15, 2003, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.



(Seal)

Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *James Stanish*

Deputy Clerk

By: *Murray & Nelson*

Ronald R Lee

Witness

Paul

Witness

By: *John Vincent*

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

Suzanne A. Hutton
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY

4/20/04

RENEWAL AGREEMENT
(Salute' Restaurant at Higgs Beach)

This Renewal Agreement is made and entered into this July 15, 2003, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to renew the Lease Agreement between the parties dated August 12, 1998, as amended on July 17, 2002, copies incorporated hereto for reference, as follows:

1. In accordance with Article 1. of the July 17, 2002 Lease Amendment, the Lessee exercises the option to renew the lease for the first of two (2) five-year terms; the first to commence on August 12, 2003, and terminate on August 11, 2008.
2. The Lease amount shall increase by the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the Annual Average CPI computation from January 1 through December 31 of the previous year. The CPI increase shall be calculated for each additional year for the five-year period.
3. Rent, therefore, payable to Monroe County shall increase by 2.4% from \$5108.12 per month to \$5230.71 per month.

In all other respects, the original agreement between the parties dated August 12, 1998, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: Isabel C. De Santis
Deputy Clerk

By: W. J. M. Spehar

Monroe County
Witness

Conch Cruisers, Inc.

Harmon D. L. L. L.
Witness

By: Dawn M. Parrinello, President
Dawn Parrinello, President

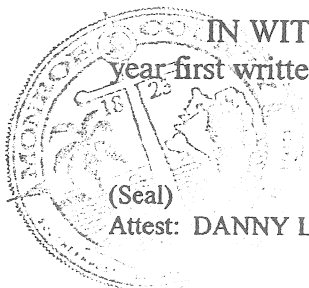
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY: Suzanne A. Hutton
SUZANNE A. HUTTON
DATE: 6/26/03

LEASE AMENDMENT
(Salute' Restaurant at Higgs Beach.)

THIS Amendment is made and entered into this 17th day of July 2002, between the COUNTY OF MONROE and CONCH CRUISER'S INC. in order to amend the Agreement dated August 12, 1998, (a copy of which is incorporated hereto by reference) as follows:

1. Revise paragraph 3 of the Lease to provide Lessee the option to renew the lease for two additional five (5) year terms; the first to commence, at Lessee's option, on August 12, 2003 (as presently provided in the lease); and the second term to commence, at Lessee's option, on August 12, 2008.
2. Revise paragraph 6(A) of the lease to provide: (1) Lessee shall be entitled to close the restaurant for three (3) weeks, between the dates September 16 and October 15 of each year; and (II) Public restrooms shall be opened at 7:00 a.m. and close at 11:00 p.m., Monday - Sunday, including holidays, pending change in County Ordinance #13.5-3(2)(C).
3. In all other respects, the original agreement between the parties dated August 12, 1998, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal, the day and year first written above.



(Seal)

Attest: DANNY L. KOLHAGE, CLERK

By: *Gamela Hancock*

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____

Cordy Sander
Witness to Conch Cruisers, Inc.

CONCH CRUISERS, INC.

By: *Dawn M. Parrinello*

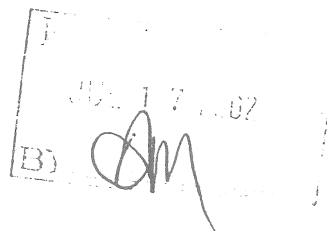
Dawn Parrinello, President

Shannon C. Lynn
Witness to Conch Cruisers, Inc.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY *Suzanne A. Hutton*
SUZANNE A. HUTTON

DATE 7/16/02



THIRD AMENDMENT TO LEASE AGREEMENT
(Higgs Beach Concession/Restaurant)

THIS LEASE AMENDMENT entered into the 16th day of May, 2001, by and between the Board of County Commissioners, Monroe County, Florida (Lessor) and Conch Cruisers, Inc. (Lessee).

WHEREAS, the parties did enter into a lease on August 12, 1998; and

WHEREAS, said Lease has been amended twice; and

WHEREAS, said Lease provides in Paragraph 6(a) to open public restrooms from 7 AM to sunset seven days a week year round, including holidays; and

WHEREAS, paragraph 6(c) of the Lease provides for Lessee to provide full janitorial services for the public restrooms including providing all janitorial supplies and paper products; and

WHEREAS, said janitorial services are to be provided on a daily basis to ensure restrooms are clean and sanitary; and

WHEREAS, said Lease makes no separate provision for adjustments or action other than termination of the Lease for breach of covenants under Paragraph 5, which conditions Lessee's possession upon performance and observance of Lessee's covenants; and

WHEREAS, said Paragraph allows the County to maintain the property but does not provide any penalty for Lessee's failure to do so; and

WHEREAS, numerous complaints and bad inspection reports have been generated as a result of Lessee's failure to keep the restrooms open the requisite number of hours and failure to keep the public restroom clean and sanitary; and

WHEREAS, the County deems it necessary to the sanitation of the public restrooms, thereby affecting public health and safety, to clean the restrooms; and

WHEREAS, Lessee is willing to relinquish responsibility for the public restrooms and increase the monthly rental fee to cover the County's cost of assuming such responsibility; now, therefore

IN CONSIDERATION of the promises contained herein, the lease dated August 12, 1998, as previously amended, is hereby amended as follows:

1. Paragraph 1 is amended to read:

This Lease evidences the grants, covenants and agreements made between the parties with reference to the following described premises and as further identified in Exhibit A.

Clarence S. Higgs Memorial Beach, Key West, Florida - including exclusive use of restaurant facilities and storage areas, to have the exclusive right to provide and maintain a full service concession/restaurant such as furnishing food and beach concession at Clarence S. Higgs Memorial Beach and maintain all equipment necessary for the operation of these facilities.

2. Paragraph 4 shall be amended to provide, as of the date of this Agreement, that monthly rent shall be increased by the sum of \$1,162.00 per month to cover the cost of the County providing janitorial services and opening and closing the public restrooms.

3. Paragraph 6(a) shall be amended to delete the second sentence, such that the subparagraph provides only:

To keep open such concession/restaurant Monday through Sunday, including holidays, from 7 AM to 10 PM, and shall not exceed the established beach hours specified in Monroe County Code, Sec. 13.5-3(2)(e).

4. Paragraph 6(c) shall be deleted.

5. The remaining provisions of the original lease agreement between the parties dated August 12, 1998, as previously amended, not inconsistent herewith, remain in full force and effect.



WITNESS WHEREOF, the parties hereto have caused these presence to be executed as of the 12th day of August, 2001.

Witness: LARRY L. KOLHAGE, Clerk

By

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By

Mayor/Chairman

CONCH CRUISERS, INC.

By

Dawn M. Parrineilo

Witnesses

Witnesses

Jdleasecorch3

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY

SUZANNE A. HUTTON

DATE

4/11/01

SECTION THREE
NEGOTIATED LEASE AGREEMENT

THIS lease, entered into on the 12th day of August, 1998, by and between the BOARD OF COUNTY COMMISSIONERS, MONROE COUNTY, FLORIDA (Lessor) and Conch Cruisers, Inc., Sal Parrinello (Lessee), whose address is 1601 Bahama Drive, Key West, Florida, 33040.

The parties to this lease hereby agree to the following:

1. This lease evidences the grants, covenants and agreements made between the parties with reference to the following described premises and as further identified in Exhibit "A".

Clarence S. Higgs Memorial Beach, Key West, Florida - including exclusive use of all existing facilities, restaurant, bath house, and storage areas, to have the exclusive right to provide and maintain a full service concession/restaurant, such as furnish food and beach concession and provide janitorial services to the public rest rooms inclusive of opening and closing and supplying paper products at Clarence S. Higgs Memorial Beach and maintain all equipment necessary for the operation of these facilities.

2. The Lessor hereby grants to the Lessee the exclusive right and privilege of operating and maintaining a full service concession/restaurant at Clarence S. Higgs Memorial Beach, Key West, Monroe County, Florida, for a term of five (5) years, said concession/restaurant to be located at the concrete building now situated upon said beach, and in as is condition. Square footage allocations shall be limited to the interior and enclosed patio area as referenced in Exhibit "A".
3. The Lessee may exercise an option to renew this lease for an additional five (5) years with written consent of the Board of County Commissioners, by giving Lessor written notice of their intention to exercise said option within sixty (60) days previous to the expiration of the original five (5) year term.

- ART. 4. The Lessee, in consideration of the foregoing rights and privileges, does hereby covenant with the Lessor to pay rental fees as follows:

Year one (1): Monthly rent \$4,583.33 (\$55,000.00 per year)

Years two (2) thru five (5): Monthly rent \$4,910.00 (\$58,920.00 per year)

The contract/agreement (lease) amount agreed to herein may be adjusted annually in accordance with change in the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the annual average CPI computation from January 1 through December 31 of the previous year.

- A. Upon execution of this lease and prior to the Lessor's delivery of the premises to Lessee, Lessee shall deliver to the Lessor the sum of \$5083.33, for the first month's rent and damage deposit of \$500.00 and an irrevocable letter of credit from a local bank in the amount of \$4,910 for the last month's rent. Lessor shall not be required to post bond securing said advance rent or deposit.

B.

#

The first month's rent, paid in advance, shall be for the month of October, 1998. Rent shall be due on the first day of each and every month thereafter, rent being payable in advance during the term of this lease. Lessee may assume occupancy as of August 13, 1998 for the purpose of coordinating demolition and renovation improvements, conditioned upon his full compliance with all terms of this lease, inclusive of insurance coverage effective as of said date. In addition to the foregoing rental payments, the Lessee covenants and agrees with the Lessor to pay State taxes, if any, and all utility charges, including but not limited to electric, water, sewer, and solid waste at said concession/restaurant, which shall be a result of the operation of the facilities granted under this lease. The Lessor reserves the right to terminate this lease for non-payment of rent by the Lessee for a period of fifteen (15) days or more.

5. In connection with the above demised properties, the Lessor covenants with the Lessee that conditioned on Lessee's performance and observance of Lessee's covenants herein, Lessee shall have quiet enjoyment and peaceable possession of the premises during the term of this lease. In the event the county elects to maintain and/or improve its properties in the vicinity of the leasehold herein, either by necessity, or by choice, such activity will not be considered as a breach of any covenant of this lease.
6. Lessee further covenants and agrees as follows:
 - A. To keep open such concession/restaurant Monday-Sunday, including holidays, from 7:00AM-10:00PM, and shall not exceed the established beach hours in as specified in Monroe County Ordinance 13.5-3 (2)(E). . Public rest rooms shall be opened at 7:00AM and closed at sunset, Monday-Sunday, including holidays, in accordance with Monroe County Ordinance 13.5-3(2)(C).
 - B. To furnish the necessary equipment, furnishing and fixtures needed to operate the concession/restaurant. All moveable equipment and furnishings shall remain the property of the Lessee and may be removed from the premises by Lessee at the termination of this lease agreement, with Lessor's consent. If Lessee fails to remove said moveable equipment or furnishings within ten (10) days after termination of this lease, said items shall then become the property of the Lessor.
 - C. Lessee shall provide full janitorial services for the public rest rooms inclusive of providing all janitorial supplies and paper products. Janitorial service frequency shall be on a daily basis to ensure rest rooms are maintained clean and sanitary. Rest rooms are to be inspected during the regular business day to ensure supplies are available and facility is clean and properly sanitized.
 - D. Lessee shall maintain a City and County Occupational License during the period of this lease.
 - E. Lessee agrees to keep the leased premises in a safe, clean, and well-maintained order at no expense to the Lessor. This provision is to be monitored by the Director of Public Facilities Maintenance or his representative.
 - F. Lessee agrees to operate his business in a business-like manner.

- 7 It is agreed by the parties hereto that Lessee may elect to sub-lease or assign the lease agreement only upon previous written consent of the Board of County Commissioners for Monroe County. The terms of this agreement shall be binding on the heirs, executors, administrators, sub-lessees and assigns of Lessee, which shall not be unreasonably withheld.
- 8 It is hereby covenanted, stipulated and agreed by and between the parties hereto that there shall, during the said demised term, be no mechanic's liens upon the concession/restaurant or improvements thereto; in case of any attempt to place a mechanic's lien on premises, the Lessee must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, said Lessor shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the option of the said Lessor, be so much additional rent due from said Lessee at the next rent due after such payment, with interest at the rate established by the Comptroller under Sec. 55.03, F.S., for the year in which the payment became overdue. Nothing in this paragraph is to be read as a waiver or authorization by the County of its constitutional and statutory immunity and right to have its property free of such liens.
- 9 Alcoholic beverages may be sold within the enclosed restaurant and patio only, upon acquisition and maintaining proper licenses from local, state, and federal agencies. No carry-out sales of alcoholic beverages is permitted. Sales and consumption of alcoholic beverages must cease by 10:30 P.M.
- 10 Entertainment may be provided only in the enclosed restaurant and patio area. Any entertainment must be acoustic soft background music and must cease by 10:30 P.M.
- 11 Lessee shall be responsible for and provide all licenses required by all local, state and federal agencies, including Department of Health.
- 12 It is expressly covenanted between the parties hereto that the Lessee will not use, suffer nor permit any person to use in any manner whatsoever the said demised property, nor any portion thereof, for purposes calculated to injure the reputation of the premises or of the neighboring property, nor for any purpose or use in violation of the laws of the United States, or of the State of Florida, or of the ordinances of Monroe County, Florida and that the Lessee will keep and save the Lessor forever harmless from any penalty or damage or charges imposed for any violation of any said laws, whether occasioned by neglect of Lessee, and that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage and expense arising out of any accident or other occurrence, causing injury to any person or property whomsoever or whatsoever, and due directly or indirectly to the use of the premises, or any part thereof, by the Lessee.
- 13 It is further agreed that in no case shall the Lessor herein be liable, under any express or implied covenants in this lease agreement, for any damages whatsoever to the Lessee beyond the rent reserved by the Lease agreement accruing, for the act, or breach of covenant, for which damages may be sought to be recovered against said Lessor, and that in the event said Lessee shall be ousted from the possession of said property by reason of any defect in the title of said Lessor or said Lessor's authority to make this lease agreement, said Lessee shall not be required to pay rent under this lease agreement while

he is so deprived of the possession of said property, and that said Lessor shall not incur any liability of such ouster.

14. It is further mutually covenanted and agreed between the parties hereto that no waiver of a breach of any of the covenants of this lease agreement shall be construed to be a waiver of any succeeding breach of the same covenant.
15. The Lessee hereby covenants and agrees that he, his agents, employees or otherwise shall observe and obey all lawful rules and regulations which may from time to time during the term hereby promulgated and enforced by the Lessor at said beach.
16. The Lessor reserves the right hereunder to enter upon the premises at any reasonable time during normal beach hours for the purpose of inspecting said premises, and the Lessee hereby agrees to keep the premises at all times in a clean and sanitary condition, and not to maintain or keep upon said premises any properties or equipment not used in connection with the operation of said business, unless authorized by the Lessor to do so.
17. The Lessee agrees not to make any major alterations to the building located on said premises, without first obtaining written consent of the Lessor to do so, which will not be unreasonably withheld. Such alterations shall be based on plans approved by the Director of Facilities Maintenance and shall be subject to all City and County Code provisions governing construction. Lessee shall be responsible for obtaining any permits required by any governmental agency.
18. The Lessee shall be responsible for maintaining the structure. The Lessee will keep the premises clean at all times and must meet all requirements for food handling as required by the Monroe County Department of Health. All site improvements shall be pre-approved by the Monroe County Board of County Commissioners.
19. The Lessee shall be responsible for applying and obtaining all permits necessary by all local, state, and federal agencies.
20. Lessee covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of the Lessee utilizing the property governed by this lease rental agreement. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.
21. All property of any kind that may be on the premises during the continuance of this Lease shall be at the sole risk of the Lessee, the Lessor shall not be liable to the Lessee or any other person for any injury, loss, or damage to property to any person on the premises.

22. In the event that the demised premises, or the major part thereof are destroyed by fire, storm, or any other casualty, the Lessor at its option may forthwith repair the damage to such structure at its own cost and expense. The rental thereon shall cease until the completion of such repairs and the Lessor will immediately refund the pro rata part of any rentals paid in advance by the Lessee prior to such destruction. Should the premises be only partly destroyed, so that the major part thereof is usable by the Lessee, then the rental shall abate to the extent that the injured or damaged part bears to the whole of such premises and such injury or damage shall be restored by the Lessor as speedily as is practicable and upon the completion of such repairs, the full rental shall commence and the Lease shall then continue the balance of the term.
23. All written notices pursuant to this lease shall be forwarded to the following addresses:
- | | |
|-----------------------------------|-------------------------|
| Lessor: | Lessee: |
| Monroe County Public Works | Conch Cruisers, Inc. |
| Facilities Maintenance Department | Sal Parrinello |
| 3583 South Roosevelt Boulevard | 1601 Bahama Drive. |
| Key West, Florida 33040 | Key West, Florida 33040 |
24. If any dispute concerning this lease should arise between the Lessor and Lessee and which results in litigation, the prevailing party shall be entitled to payment of its reasonable attorney's fees and costs associated with said litigation from the losing party.
25. The Lessee will be responsible for all necessary insurance coverage as indicated on the attached forms identified as GIR, GL, WC1, VL, GLLIQ, ARP, and all other requirements found to be in the best interest of Monroe County, as may be imposed by the Monroe County Risk Management Department. All insurance required coverages shall actively be maintained during the lease term.
26. This lease shall be governed by the laws of the State of Florida. Venue for any disputes arising under this agreement shall be in a court of competent jurisdiction in Monroe County, Florida.



WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the
18th day of April, 1998

Attest: DANNY L. KOLHAGE, CLERK

By: [Signature]

Witness

[Signature]
Witness

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

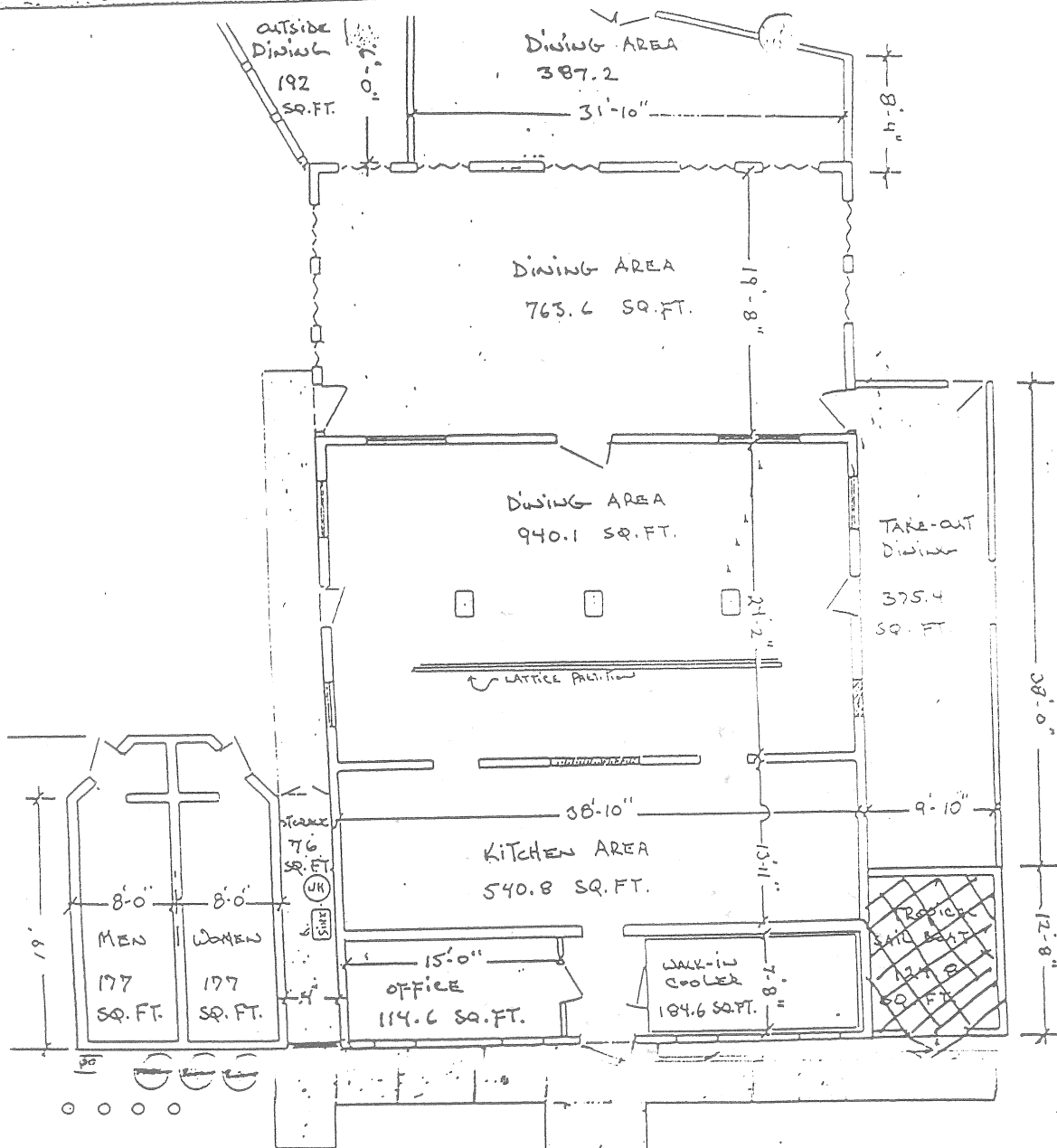
By: [Signature]
Mayor/Chairman

(Lessee)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: [Signature]
SUZANNE A. HUTTON

DATE 8/6/98



TOTAL USABLE SQUARE FEET

3,928.3 ±

(SIDE WALKS NOT INCLUDED)

4-17-98

SKETCH BY J. KING

HIGGS BEACH
CONCESSION FACILITY

SHT. SIZE 11"X17"

SCALE 1/8" = 1'-0"

(NOTE) NOT TO SCALE WHEN REDUCED

EXHIBIT 1000

DESIGNED BY J. KING